Supreme Court, U.S.
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No. 99-1827

IN THE

Supreme Court of the United States

MELANIE STARKMAN,

Petitioner,

v.

THE REV. T. NICHOLS EVANS, a.k.a. NICK EVANS, individually and in his official capacity, etc. and MUNHOLLAND UNITED METHODIST CHURCH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICUS CURIAE* STATE OF LOUISIANA IN SUPPORT OF PETITION

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TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Summary of Argument	2
Conclusion	8

TABLE OF CITED AUTHORITIES

Page

Cases:

Amos v Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter Day Saints, 594 F. Supp. 791 (Cen. Dist. Utah 1984) 6

Bollard v. The California Province of the Society of Jesus, etc., 1999 U.S. App. LEXIS 30767, 196 F.3d 940 (9th Cir. December 1, 1999), *rehearing and rehearing en banc denied with dissent* (9th Cir. May 5th, 2000), 2000 U.S. App. LEXIS 8866 .....2, 3, 4, 8

Catholic High School Association of the Archdiocese of New York v. Culvert, 753 F.2d 1161 (2nd Cir. 1985) 6

Davis v. Cottage Hill Baptist Church, 1995 WL 795673 (S.D. Ala. 1995) 6

DeArment v. Harvey, 932 F.2d 721 (8th Cir. 1991) 6

Dole v. Shenandoah Baptist Church, 899 F.2d 1389 (4th Cir. 1990) 6

Equal Employment Opportunity Commission v. Fremont Christian School, 781 F 2d 1362 (9th Cir. 1986) 6

Cited Authorities

	Page
Gargano v. Diocese of Rockville Centre, 80 F.3d 87 (2nd Cir. 1996)	5
General Council on Finance and Administration of the United Methodist Church v. Superior Court of California, County of San Diego, 439 U.S. 1355, 99 S. Ct. 35, 58 L. Ed. 2d 63 (1978)	7
Lemon v. Kurtzman, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971)	5
Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985)	7
Russell v. Belmont College, 554 F. Supp. 667 (M.D. Tenn. 1982)	6
Volk v. Pribonic, 1996 WL 230103 (W.D. Pa. 1996)	6
Weissman v. Congregation Shaare Emeth, 38 F.3d 1038 (8th Cir. 1994)	5, 6
Statutes:	
42 U.S.C. § 12113(c)	4, 5
42 U.S.C. § 12113(c)(2)	4

Cited Authorities

Page

United States Constitution:

First Amendment 2, 5, 6, 7

Fifth Amendment 6

Other Authority:

29 C.F.R. § 1630.16(a) 4, 5

MAY IT PLEASE THE COURT:

SUMMARY OF THE POSITION OF THE AMICUS CURIAE, STATE OF LOUISIANA

This amicus curiae brief is being filed in support of plaintiff, a disabled American veteran, because it seems that the so called "ministerial exception" to fundamental civil rights, such as the fundamental rights of plaintiff to petition for redress of valid claims under the Americans With Disabilities Act (ADA), should not be expanded in this case to cover secular, civilian employees of churches, such as a choir director who is not seeking to become a minister. After all, why should a secular disabled American veteran be deprived of her civil rights under the ADA, merely because the alleged violators are a minister and a church? Churches are required by federal law to comply with the ADA, and the so called "ministerial exception" should not be expanded beyond the legitimate protection of a church's right to choose its own ministers, the public policy foundation of the exception, which is not an issue here and which does not apply here. A fair reading of this record and of the briefs shows that Ms. Starkman was never a minister, never sought to be a minister, was a purely secular choir director, and does not seek reinstatement from her church employer. Ms. Starkman's employer admitted in their depositions that she was a "secular", i.e., non-ecclesiastical employee, and these deposition excerpts were filed into the record.

Although the briefs show both party defendants admitted in depositions that Ms. Starkman is a "secular," i.e., non-ecclesiastical, employee, the defendants suddenly claimed that she was actually a "spiritual leader," much to her surprise, as expressed by her comprehensive affidavits of

record controverting this fallacy. Accordingly, at minimum, there should simply be a fair trial on the merits of these issues, and not an unfair and unjust dismissal of her ADA claims, upon an improper summary judgment, based upon on an unfairly expanded "ministerial exception". Otherwise, the disabled citizens of Louisiana and of the other States will fail to obtain adequate redress for their grievances, and will need increased State services to compensate them for their injuries at the hands of others, if their claims are unfairly dismissed with no trial at all, much less a fair trial.

As recognized by the Ninth Circuit Court of Appeal, but not the Fifth Circuit Court of Appeal, in the virtually simultaneous case of *Bollard v. The California Province of the Society of Jesus, etc.*, 1999 U.S. App. LEXIS 30767, 196 F.3d 940 (9th Cir. December 1, 1999), *rehearing and rehearing en banc denied with dissent* (9th Cir. May 5th, 2000), 2000 U.S. App. LEXIS 8866 (construing the so-called "ministerial exception" narrowly and refusing to apply it to an actual minister where no valid public policies were threatened under the facts of the case); the dissent noted as recently as May 5th, 2000 that these issues raised herein are issues of "*exceptional importance*". *Bollard, id.*

SUMMARY OF ARGUMENT

This is indeed a rare case of exceptional importance, as the trial and panel opinion effectively deprive Ms. Starkman of her fundamental civil rights under the important Americans With Disabilities Act, on the sole ground of the First Amendment's so called "ministerial exception" to the civil rights laws, with no valid constitutional public policy justification presented, since Ms. Starkman was not a minister, and does not seek reinstatement of her employment

at the church. Why should the Fifth Circuit continuously expand the "ministerial exception," thus cutting back on the rights of the disabled and of other injured citizens, when Circuits such as the Ninth Circuit are cutting back on the "ministerial exception"? Disabled persons with unredressed injuries may become burdensome on the States, through increased use of scarce State medical and social resources. Why should violators of the ADA be protected by this Court, and be allowed to discriminate against and abuse the disabled with impunity, when there is no legitimate public policy protecting churches being threatened, and when there is no legitimate public policy served in allowing abuse of the disabled to go unpunished?? Why should an *actual* civil rights violation be allowed to go unremedied, on the grounds of protecting against an *imaginary* Religion Clauses violation? The right of a church to choose its own ministers is not threatened by this important ADA proceeding, which should clearly take precedence. The proper contours of this "exception" to fundamental civil rights laws demand clarification by the Supreme Court of the United States, where millions of secular church workers are affected and where the Circuit Courts are clearly moving in opposite directions on the issue. The very large number of these reported cases alone shows that there is a significant burden of unredressed grievances being placed upon the States through improper pretrial dismissals.

The necessity for a compelling constitutional reason to permit an exception to the civil rights laws on the grounds of the so called "ministerial exception", was recently recognized by *Bollard v. The California Province of the Society of Jesus, etc.*, 1999 U.S. App. LEXIS 30767, 196 F.3d 940 (9th Cir. December 1, 1999), *rehearing and rehearing en banc denied with dissent*, (9th Cir. May 5th, 2000), 2000

U.S. App. LEXIS 8866, handed down after oral argument in this case, which refused to apply the ministerial exception to an actual minister who had left the order in a sexual harassment case. Otherwise, the Court would again be blindly choosing to fail to remedy an actual constitutional violation, supposedly in order to protect the imaginary, non-existent constitutional violation.

In the dissenting opinion to the order denying rehearing and rehearing en banc in *Bollard v. The California Province of the Society of Jesus, etc.*, 1999 U.S. App. LEXIS 30767, 196 F.3d 940 (9th Cir. December 1, 1999), *rehearing and rehearing en banc denied with dissent*, (9th Cir. May 5th, 2000), 2000 U.S. App. LEXIS 8866, the dissent recognized that these issues raised herein are issues of "exceptional importance," *Bollard, id.*, thus warranting Supreme Court review.

As a general rule, the ADA, by its very terms, applies to religious institutions. Under 42 U.S.C. § 12113(c), the character of defenses available to religious entities is severely curtailed. The general rule is that religious entities must conform to the ADA, although a logical available defense is that a religious entity may discriminate on the basis of religion, i.e., their employees adhering to their "religious tenets," 42 U.S.C. § 12113(c)(2).

Indeed, the relatively recent federal regulations governing compliance by religious entities with the ADA broadly mandate compliance by religious entities with all aspects of the ADA. *See* 29 C.F.R. Part 1630.16(a), which, while permitting to religious entities the requirement of particular religious affiliations, go on to state that:

> However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, because of his or her disability.

29 C.F.R. § 1630.16(a).

By including the defenses available to religious entities described by 42 U.S.C. § 12113(c) and 29 C.F.R. § 1630.16(a), Congress sought to eliminate "entanglement" problems described in *Lemon v. Kurtzman*, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971). However, the outright noncompliance with the ADA sought by the Rev. Evans and the Munholland United Methodist Church led by him on the grounds of "burden" or "expense," was *never an option offered by Congress in its passage of the ADA.* The brief reveals that the defendant's insurance company, and not the defendants, paid for the extensive defense of this complaint.

The jurisprudence developing under the ADA and other civil rights statutes has not hesitated to apply these civil rights statutes to churches. In *Gargano v. Diocese of Rockville Centre*, 80 F.3d 87 (2nd Cir. 1996), the Second Circuit found that the Establishment Clause was no bar to an employee's suit against a religious school alleging violations of the Age Discrimination in Employment Act (ADEA). The court noted that religious groups are generally not immune from all governmental regulation of their employment relationships, or from court enforcement of those laws. Similarly, in *Weissman v. Congregation Shaare Emeth*, 38 F.3d 1038 (8th Cir. 1994), an ADEA claim by a former administrator of a religious institution was held to not pose a significant risk of infringement on the First Amendment, and therefore the

religious institution was not immune from the ADEA claim. This case is similar to *Weissman*. *See also Russell v. Belmont College*, 554 F. Supp. 667 (M.D. Tenn. 1982). *Amos v Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter Day Saints*, 594 F. Supp. 791 (Cen. Dist. Utah 1984) and *Catholic High School Association of the Archdiocese of New York v. Culvert*, 753 F.2d 1161 (2nd Cir. 1985).

In *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990), the Fourth Circuit held that the Fair Labor Standards Act applied to church-operated schools and employees, and did not violate any First or Fifth Amendment rights of the church or its teachers or employees. In *Equal Employment Opportunity Commission v. Fremont Christian School*, 781 F.2d 1362 (9th Cir. 1986), the Ninth Circuit concluded that the exemptions from Title VII and the Equal Pay Act did not prohibit the application of those statutes to a religious school. No Free Exercise or Establishment Clause violations were found, allowing the court to prohibit a discriminatory health insurance practice engaged in by the religious school. In *DeArment v. Harvey*, 932 F.2d 721 (8th Cir. 1991), the court found that the First Amendment did not prohibit application of the Fair Labor Standards Act to a church school.

Several District Court decisions have recognized that the ADA applies to religious institutions generally, and have not dismissed employee suits on First Amendment grounds. *See Volk v. Pribonic*, 1996 WL 230103 (W.D. Pa. 1996), or *Davis v. Cottage Hill Baptist Church*, 1995 WL 795673 (S.D. Ala. 1995).

The case primarily relied upon by defendants, *Rayburn v. General Conference of Seventh-Day Adventists,* 772 F.2d 1164 (4th Cir. 1985), is highly distinguishable. In *Rayburn,* the plaintiff was applying for the job of associate pastor. An associate pastor is obviously covered by the "ministerial exception." This Court cannot constitutionally instruct a church concerning who it should and who it should not make into a minister. This is a fundamental constitutional bar, prohibiting the state's intrusion into ecclesiastical matters. Plaintiff cannot and does not dispute this fundamental public policy principle underlying the "ministerial exception." However, the plaintiff in *Rayburn* was an associate pastor, not a lay employee like plaintiff.

The record shows clearly that the plaintiff actually was never authorized to perform any ceremonies of the Church under *Southwestern*, and did not qualify to perform any ceremonies or sacraments. In *General Council on Finance and Administration of the United Methodist Church v. Superior Court of California, County of San Diego,* 439 U.S. 1355, 1369, 99 S. Ct. 35, 58 L. Ed. 2d 63, 77 (1978), and in rejecting the claims raised by the United Methodist Church in that case, the Supreme Court of the United States made clear that the courts could constitutionally conduct their own inquiry into the structure and operation of a church consistent with the First Amendment. In so doing, the court may examine pertinent information generated by the church, such as the Methodist Book of Discipline. As that publication and her Declaration make clear, Ms. Starkman was never authorized to perform ceremonies or administer sacraments.

CONCLUSION

The decision should be reversed, because the federal court system should unhesitatingly seek to protect the rights of the disabled from discrimination. Here, the church's right to choose its own ministers is not being questioned or threatened, and reinstatement is not being sought. This right of the church to choose its own ministers is the proper place for the "ministerial exception," not some unwarranted and unnecessary extension of the "ministerial exception" into non-ecclesiastical, secular areas in which it does not and should not apply. This exception to fundamental civil rights laws certainly should not be abused, stretched, and expanded to impermissibly protect illegal discriminatory conduct towards the disabled, as recognized by the Ninth Circuit in *Bollard*. Otherwise, a substantial burden upon the State will be created by unredressed grievances, and increased medical and social costs, due to improper pretrial dismissals. Furthermore, the decision should be reversed, to assure that litigants in the federal judiciary receive fair trials, and do not have their valid and substantial claims dismissed on unwarranted grants of summary judgment, where they have, as here, submitted ample controverting evidence, clearly demonstrating the existence of genuine, and *bona fide,* material issues of fact in dispute, warranting a simple fair trial on the merits of the dispute. As our more vulnerable citizens, the disabled persons of this country especially deserve judicial protections.

Respectfully submitted,

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